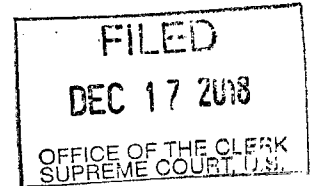


No. **18-8963**

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES



JOSE COBIAN

PETITIONER

(Your Name)

vs.

STATE OF ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court, Third District, Illinois

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jose Cobian

(Your Name)

Vienna Correctional Center  
6695 State Rt. 146E

(Address)

Vienna, Illinois 62995

(City, State, Zip Code)

(618)658-8371

(Phone Number)

## QUESTION(S) PRESENTED

1.. Whether the U.S. Supreme Court's holding in Southern Union Co. v. United States, 567 U.S. \_\_\_\_ has clarified that criminal fines are subject to the rule announced in Apprendi, effectively rendering 730 ILCS 5/5-9-1.1 (Drug "Street Value" fine statute) unconstitutional on its face.

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2. Whether the U.S. Supreme Court's holding in Class v. United States, 583 U.S. \_\_\_\_ has determined that a guilty plea does not prevent one from challenging a statute without withdrawing a plea.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of  
~~all parties to the proceeding in the court whose judgment is the subject of this~~  
petition is as follows:

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by the Illinois Supreme Court in Case #123719

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## TABLE OF AUTHORITIES CITED

### CASES

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CLASS V. UNITED STATES, 538 U.S. \_\_\_\_ (2017)

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PEOPLE V. AEISLER, 125 Ill.2d 42

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### STATUTES AND RULES

730 ILCS 5/5-9-1.1 (West 2015)

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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**OPINIONS BELOW**

☐ For cases from **federal courts**:

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The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

- ☐ reported at NO. 3-16-0232; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Illinois Supreme Court court appears at Appendix A to the petition and is

- ☐ reported at No. 123719; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 26, 2018. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: May 24, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348

Due Process and Right to a Jury Determination, 5th, 6th & 14th Amendments of U.S. Const.

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## STATEMENT OF THE CASE

Petitioner, Jose Cobian, entered a plea of guilty on January 28, 2015 to Count I of Possession of a Controlled Substance with Intent to Deliver (5000 grams), both Class X Offenses. Upon the Court's acceptance of Petitioner's guilty plea and Petitioner waiving a hearing on the seized drugs "street value" (due to not having a right to a jury finding beyond a reasonable doubt) assessment to impose the criminal fine, pursuant to 730 ILCS 5/5-9-1.1 (Drug Street Value Fine).

"CONTINUE ON THE OTHER SIDE"



Petitioner was then sentenced to 15 years on Count I, and six (6) years on Count II, and the sentences were to be served concurrently in the Illinois Department of Corrections.

Petitioner was then remanded into the custody of the Sheriff. Pursuant to the official record Petitioner left the courtroom, and the Court on it's own findings, assessed the "street value" of the seized drugs, and ordered a criminal fine upon the Petitioner in the amount of \$629,252.00, pursuant to 730 ILCS 5/5-9-1.1 (West 2015).

#### ARGUMENT I.

THE REVIEW COURT'S AFFIRMANCE OF THE CIRCUIT COURT'S DISMISSAL OF PETITIONER'S APPENDI CHALLENGE BASED ON HIS WAIVER OF A JURY TRIAL AND PLEA OF GUILTY IS CONTRARY TO THE U.S. SUPREME COURT'S HOLDING IN CLASS V. UNITED STATES

Petitioner contends that the review court's granting of counsel's motion to withdraw and affirmation of the Circuit Court's dismissal of his 2-1401(f) petition (which challenged the constitutionality of the Drug "Street Value" Fine Statute) runs contrary to the U.S. Supreme Court's holding in Class v. United States, 538 U.S. \_\_\_\_ (2017) (which held: "a guilty plea, by itself, does not bar a ||criminal defendant from challenging the constitutionality of his statute of conviction \*\*\*"). The primary basis for affirming petitioner's case was their belief that "defendant waived his Apprendi argument when he waived his right to a jury trial and pled guilty," citing People v. Jackson, 199 Ill.2d 286, 295 (2002).

Petitioner filed a timely Petition for Rehearing informing the review court that their April 20, 2018 Order runs afoul of the U.S. Supreme Court's holding in Class v. United States, because contrary to their holding, the U.S. Supreme Court has determined that: "a guilty plea does not bar a defendant from challenging the constitutionality of a statute (See Page 2 of Petition for Rehearing).

Also note, that this Honorable Supreme Court has long held that "a defendant may argue that a criminal statute is unconstitutional and void at any time, See People v. Bryant, 128 Ill.2d 448 (1989); People v. Aeisler, 125 Ill.2d 42; and People v. Frey, 54 Ill.2d 28 (1973).

## ARGUMENT II.

THE REVIEW COURT'S RELIANCE ON PEOPLE V. JACKSON IS MISPLACED BECAUSE JACKSON MADE AN APPRENDI CLAIM AGAINST THE EXTENDED TERM STATUTE (WHICH HAD ALREADY BEEN REJECTED IN PEOPLE V. FORD), WHEREAS PETITIONER'S CHALLENGE TO THE DRUG STREET VALUE FINE STATUTE HAS NEVER BEEN DECIDED IN ILLINOIS

Petitioner further contends that the review court's reliance on People v. Jackson, 199 Ill.2d 286, 296 (which held: "this court has already upheld an extended term sentence imposed pursuant to these statutes |730 ILCS 5/5-5-3.2(b)(2) & 5-8-2(a)|. See People v. Ford, 198 Ill.2d 68 \*\*\* (2001). Accordingly, the statutory scheme is simply not facially unconstitutional. The exceptions to the waiver rule upon which defendant relies do not excuse the waiver in this case.") is misplaced because petitioner's challenge was not against the extended term statute, it is against the drug street value fine statute.

Petitioner contends that currently there exist no Illinois president/case law that has addressed whether or not the drug street fine statute (730 ILCS 5/5-9-1.1) is facially void ab initio in violation of the Apprendi rule. So now that the U.S. Supreme Court has determined that "A guilty plea does not bar a criminal defendant from challenging the constitutionality of his statute of conviction" no inferior court should be allowed to hold contrary to that position.

WHEREFORE, in light of the above petitioner pray that this Honorable Court will grant leave to appeal, or exercise its supervisory authority to compel the review court to follow the president handed down by the U.S. Supreme Court in Class v. United States, and Southern Union Co. v. United States.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jose Cob - Dec. 11, 2018 *Karin Joy Pannier*

Date: 12/11/18

